FEDERATION REPORTS

PUBLIC PROSECUTOR v. CHUA YEOH PAN.

[App. Crim. Juris. (Pretheroe, Ag. C.J.)
July 21, 1950]

[Malacca — Criminal Appeal No. 4 of 1950]

Motor Vehicles (Construction and Use) Regulations, 1948, regulation 98 — Using a vehicle on a public road with inefficient brakes — Liability of owner.

In this case the Public Prosecutor appealed against the acquittal of the respondent on a charge of using a vehicle, to wit a lorry, on a public road when its braking system was not in good and efficient working order, contrary to regulation 98 of the Motor Vehicles (Construction and Use) Regulations, 1948. It appeared that the lorry was being driven by a servant of the respondent and that the respondent had had the lorry serviced regularly and that though he had instructed his driver to report any defects in the lorry to him, the driver had not reported that the brakes were inefficient.

Held, that the obligation on the owner was absolute and the respondent should in this case have been found guilty of using the lorry for the purposes of regulation 98 of the Motor Vehicles (Construction and Use) Regulations, 1948.

In view of the many mitigating circumstances in this case, which led the Magistrate to acquit the respondent, a nominal fine of $10.00 was imposed.

Cases referred to :—

(1) *Public Prosecutor v. Ong Cho Teck* (1946) M.L.J. 85.

(2) *Griffiths v. Studebakers Ltd.* (1924) 1 K.B. 102.

CRIMINAL APPEAL.

Hugh Shepherd (D.P.P.) for the appellant.

W. H. Sault for the respondent.

Pretheroe, Ag. C.J. : — The charge in this case was that the respondent "while being the owner of motor lorry No. S.2852 did use the said vehicle on the public road .... when its braking system was not in good and efficient working order" contrary to regulation 98 of the Motor Vehicles (Construction and Use) Regulations, 1948. The facts were that the lorry was being driven by a servant of the respondent at the time the vehicle was stopped and the brakes found to be defective. The respondent had had the lorry serviced regularly and it had in fact been to the workshops fourteen days before the brakes were found to be inefficient. Also, the respondent had instructed his driver to report any defects in the lorry to himself but the driver had not reported that the brakes were inefficient. The trial Magistrate acquitted the respondent and the Public Prosecutor appealed against the acquittal.

The main ground of appeal was that the obligation placed upon an owner by regulation 98 is absolute and consequently on his finding of fact the Magistrate should have convicted.

For present purposes the wording of rule 56 of the Motor Vehicles (Construction and Use) Rules, 1937, was the same as that of the regulation under which respondent was charged, and it was held by the Court of Appeal in *Public Prosecutor v. Ong Cho Teck*[1] that the obligation on the owner under that rule was absolute. Mr. Sault, who appeared for the respondent, did not seriously challenge that decision but submitted that under the charge as framed the respondent could not be convicted. He submitted that the respondent may have permitted the lorry to be used but he was not charged with permitting it to be used but with using it.

This point was considered in *Griffiths v. Studebakers Ltd.*[2] where the respondents were charged with "having used" a motor car on a public road in a manner contravening their licence.

The following appears in the judgment of Lord Hewart, C.J. (at page 105) :—

"It is said that they did not commit the breach alleged, as the act complained of was that of their servant. Two observations may be made upon that argument. It is quite clear that the limited company as a company could not drive the car, and secondly, it is not disputed that the employee who was driving the car on the day in question was in fact upon the respondents' business and was acting within the scope of his employment; in short, he was doing the very thing which for the advantage of the respondents he was employed to do. The only respect in which he fell short of the requirements of his employers was that, contrary to their wish, expressed in certain ways, he was carrying an excessive number of persons in the car. In those circumstances it seems clear to me that the act of the driver was the act of the respondents."

In that appeal the Court was unanimously of the the opinion that the Magistrates should have convicted the respondents. Following that precedent I hold that the respondent was "using the lorry" for the purposes of regulation 98 of the Motor Vehicles (Construction and Use) Regulations, 1948.

Finally Mr. Sault submitted that there was no evidence on which the Magistrate could find that the brakes were inefficient. At the trial the Registrar of Motor Vehicles for the Settlement of Malacca gave evidence to the effect that he tested the brakes of the lorry. He deposed that he "found the foot-brake unserviceable being only 30% efficient. The efficiency should have been at least 45%". Mr. Sault submitted that he should have stated the facts regarding the tests and left it to the Court to decide whether the brakes were efficient or otherwise. I agree that this would

have been the better course, but no attempt was made by cross-examination to elicit details of the tests, and no evidence was given for the defence alleging that the brakes were in order. Respondent's evidence was to the effect that he did not know the brakes were not in efficient working order. In these circumstances the Magistrate merely had to decide whether he accepted the evidence of the Registrar of Motor Vehicles or not. In his grounds of judgment he states that he did accept that evidence and found as a fact that the brakes were inefficient. There is no merit in this submission therefore.

For the reasons stated therefore I allow this appeal and direct that a finding of guilty be substituted in place of that entered by the Magistrate.

In view of the many mitigating circumstances in this case, which led the Magistrate to acquit the respondent, I impose a nominal fine of $10.

Appeal allowed.

In re TAN Eng SEONG OF CHOP THYE HIN; TAN ENG SEONG
v.
THE RUBBER SUPERVISION LICENSING BOARD FOR THE DISTRICT OF BENTONG, PAHANG.

[Orig. Civ. Juris. (Taylor, J.) September 11, 1950]

[Raub — Originating Motion No. 3 of 1950]

Rubber Supervision Enactment, 1937, ss. 7 and 9 — Specific Relief (Malay States) Ordinance, 1950 — Mandamus to a Licensing Board.

The Rubber Supervision Licensing Board are bound to hear a licensee before they cancel his licence and if they fail to do so an Order of Mandamus will issue to enforce the licensee's rights. Provisions of the Rubber Supervision Enactment construed and explained. Observations on tainted evidence.

Cases referred to:—

(1) *Board of Education v. Rice* (1911) A.C. at p. 182.

(2) *Krishnasamy and ors. v. Butler Madden* (1947) M.L.J. 182.

(3) *Mundell v. Mellor* (1929) S.S.L.R. 152 at p. 161.

APPLICATION for an Order of Mandamus.

A. J. Bostock-Hill for the applicant.

C. M. Sheridan (Federal Counsel) for the respondents.

Taylor, J. : — This is an application for an order of Mandamus directing the Rubber Supervision Licensing Board of Bentong to state their reasons for cancelling a licence.

The applicant is a licensed rubber dealer in the village of Karak where he and his father have carried on business with unblemished reputations for nearly forty years. In May last he received, without notice or warning of any kind, a letter from the Chairman of the Board reading:—

"I have the honour to inform you that your Licence to purchase Rubber No. 10/50 has been cancelled by the Rubber Supervision Licensing Board with effect from the date of receipt of this letter."

The Rubber Supervision Enactment, 1937, provides:—

"7. (i) The Board shall have authority in its discretion to refuse to issue licences issuable by it and to subject such issue to such conditions as it thinks fit and to suspend or cancel such licences.

"(iii) There shall be no appeal by any person affected by any such issue, refusal, suspension or cancellation but any such person shall, if he so desires, be heard by the Board either in person or by an advocate and solicitor of the Supreme Court.

"(iv) In cases of urgency the Licensing Officer may temporarily suspend any licence until the first meeting of the Board thereafter which in any such case, shall be held as soon as practicable.

"8. (i) The Licensing Officer shall have authority in his discretion to refuse to grant licences issuable by him and to subject such issue to such conditions as he thinks fit and to suspend or cancel such licences.

"(ii) Any person aggrieved by such issue, refusal, suspension or cancellation may appeal to the Ruler in Council of the State within thirty days from the date of such issue, refusal, suspension or cancellation, and the decision of the Ruler in Council shall be final.

"9. No suit or proceeding shall be maintainable in any Court of Justice in respect of any refusal, suspension or cancellation referred to in sections 7 and 8."

The applicant's solicitors applied by letter for the grounds of cancellation so that they could advise him as to whether he should apply to be heard by the Board. The Chairman refused to give reasons but offered to hear the applicant. The solicitors replied that unless the applicant were informed of the allegations against him he could not possibly meet or explain them. The Chairman, however, maintained his refusal, referring to section 9 of the Enactment, and after some further correspondence these proceedings were commenced.

The principal argument for the applicant was that unless he knew what he had to meet, he could not be effectively heard so that the refusal of grounds was a denial of justice and amounted to a denial of the statutory right to be heard. Counsel referred to *Board of Education v. Rice*[1] where Lord Loreburn said:—

"Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon